

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

FS MEDICAL SUPPLIES, LLC,

Plaintiff,

v.

TANNERGAP, INC. AND TANNER
PHARMA UK LIMITED,

Defendants.

Case No. 3:21-cv-501-RJC-WCM

**DEFENDANTS TANNER PHARMA UK LIMITED’S AND TANNERGAP, INC.’S
MOTION FOR LEAVE TO AMEND ANSWER**

Defendants Tanner Pharma UK Limited (“TPUK”) and TannerGAP, Inc. (“TannerGAP”) move, under Rule 13 and Rule 15(a)(2) of the Federal Rules of Civil Procedure, that this Court grant them leave to amend their Answer to include additional defenses and supplement existing defenses and include two additional counterclaims. Specifically, TPUK and TannerGAP seek to make the following amendments to their Answer:

- Include a Fourth Defense of Modification, Waiver, and Acquiescence by Course of Performance, which is a supplementation of TPUK’s and TannerGAP’s already-pled Third Defense;
- Include a Seventh Defense that the Distribution Agreement is Void Due to Misrepresentation;
- Supplement the already-pled Twelfth Defense titled “Compliance with the NDNCA” to provide further detail on how TannerGAP and TPUK complied with the Non-Disclosure & Non-Circumvention Agreement;

- Include a Thirteenth Defense that the NDNCA is void under California’s Business and Professions Code § 16600;
- Include an additional counterclaim against Plaintiff FS Medical Supplies, LLC (“FSMS”) for Fraud/Fraudulent Inducement; and
- Include an additional counterclaim against FSMS for Negligent Misrepresentation.

As is further detailed in the accompanying memorandum, these proposed amendments do not unduly prejudice FSMS, are brought in good faith, and are not futile.

On August, 1, 2024, counsel for TPUK and TannerGAP conferred with counsel for FSMS regarding the relief requested in this Motion, and provided them a copy of the proposed Amended Answer and Counterclaims. FSMS requested until August 12, 2024 to consider the proposed amended pleading, and indicated that FSMS was planning to seek leave to file a Second Amended Complaint in this action. On August 13, FSMS counsel indicated to the Tanner Defendants’ counsel that they would not consent to the proposed amendments. FSMS further indicated that it would be a “few weeks” before its motion for leave and proposed Second Amended Complaint would be ready for filing.

The Tanner Defendants, under Rules 13 and 15, now move the Court for leave to file the Amended Answer and Counterclaims. A redlined copy of the proposed Amended Answer is attached to this Motion as **Exhibit A**, and a clean copy is attached as **Exhibit B**.

WHEREFORE, Defendants TPUK and TannerGAP respectfully request that the Court grant their Motion and allow them leave to amend their Answer to include additional and supplemented defenses and two counterclaims.

This the 20th day of August, 2024.

McGuireWoods LLP

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